

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA)
)
4 vs.)
)
5 VENDAI LAPRIEST IRICK) CASE NO. 1:13CR339-1
) Greensboro, North Carolina
) April 17, 2014
) 9:41 A.M.

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8 TRANSCRIPT OF THE **SENTENCING HEARING**
9 BEFORE THE HONORABLE N. CARLTON TILLEY, JR.
 UNITED STATES DISTRICT JUDGE

10
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P R O C E E D I N G S

(The Defendants were present.)

MR. POUSSON: Good morning, Your Honor. Your Honor, we have three sentencings on the calendar for this morning. It's United States versus Vendai Irick, Denzel Shivers, and Rodney Byrd. This is 1:13CR339-1, 2, and 3. I believe this is a continuation of a sentencing hearing from earlier this year.

I see Mr. Shoaf present. I see Mr. Huggins present. I believe Mr. Davis might be in another courtroom.

THE COURT: Why don't we take a short break and wait for Mr. Davis so we can do all of these at the same time since they involve the same facts with regard to the offense.

MR. POUSSON: Thank you, Your Honor.

THE COURT: We'll just stand in a recess.

(The Court recessed at 9:42 a.m. and was called back to order at 9:54 a.m.)

(The Defendants were present.)

THE COURT: Mr. Pousson?

MR. POUSSON: Thank you, Your Honor. Your Honor, if it please the Court, if we could return to the matter of 13CR339-1, 2, and 3, United States versus Rodney Byrd, Denzel Shivers, and Mr. Vendai Irick. All three are present. All three are represented by counsel. This matter is calendered for a continuation of a sentencing hearing.

MR. DAVIS: Good morning, Your Honor.

1 **THE COURT:** Good morning, Mr. Davis. Everybody ready
2 to proceed with sentencing?

3 **MR. DAVIS:** We are, Your Honor.

4 **MR. HUGGINS:** Yes, Your Honor.

5 **MR. SHOAF:** We are, Your Honor.

6 **THE COURT:** Mr. Davis, you are here with Mr. Irick?

7 **MR. DAVIS:** Yes, sir.

8 **THE COURT:** Talk to me about any objections to the
9 presentence report.

10 **MR. DAVIS:** Your Honor, when we were last in Court, I
11 had filed an objection regarding the amount of loss, but that
12 was resolved; and that was the only objection that we had
13 raised.

14 **THE COURT:** Okay. And today, Mr. Irick, you are in
15 agreement with that?

16 **DEFENDANT IRICK:** Yes, sir.

17 **THE COURT:** Thank you.

18 Mr. Shoaf -- Mr. Byrd, you've read your presentence
19 report?

20 **DEFENDANT BYRD:** Yes, sir.

21 **THE COURT:** If you would stand, please. You've
22 discussed your presentence report with Mr. Shoaf?

23 **DEFENDANT BYRD:** Yes, sir. I was going over a little
24 something else on the presentencing report about my criminal
25 history, and I was asking him a quick question.

1 **THE COURT:** Okay. You certainly may do that. You
2 all should have done that before now.

3 **MR. SHOAF:** We have, Your Honor. This is the first
4 time he's raised this.

5 **THE COURT:** Well, you all sit down and talk about it.
6 In fact, we'll just take a recess, and you let us know when you
7 are ready.

8 (The Court recessed at 9:56 a.m. and was called back to
9 order at 10:00 a.m.)

10 (The Defendants were present.)

11 **THE COURT:** Mr. Shoaf?

12 **MR. SHOAF:** Your Honor, we talked and he understands.
13 He is a Record Level III for sentencing purposes.

14 **THE COURT:** Are there objections?

15 **DEFENDANT BYRD:** No, sir.

16 **THE COURT:** Mr. Huggins?

17 **MR. HUGGINS:** Good morning, Your Honor.

18 **THE COURT:** Good morning. Mr. Shivers, you talked
19 about your presentence report?

20 **DEFENDANT SHIVERS:** Yes, sir.

21 **THE COURT:** And with regard to objections, are there
22 objections?

23 **DEFENDANT SHIVERS:** No, sir.

24 **MR. HUGGINS:** No, Your Honor.

25 **THE COURT:** Okay. Then in Mr. Shivers' case and in

1 Mr. Irick's case -- in fact, in each of these cases, I will
2 adopt -- you may be seated -- I will adopt the presentence
3 report with regard to the facts stated there and the
4 application of the guidelines to those facts.

5 In Mr. Shivers' and Mr. Irick's case, the total offense
6 level is a 32. Criminal history category is a I. The advisory
7 imprisonment range is 121 to 151 months. Supervised release
8 range is 1 to 3 years. The fine range is 75,000 to 175,000,
9 and there is a 100-dollar special assessment.

10 Now, in Mr. Byrd's case, because he is a criminal history
11 category of III and total offense level of 32, the advisory
12 guideline range is 151 to 188 months with a period of
13 supervised release of 1 to 3 years. The fine range is 17,500
14 to 175,000 and the special assessment is \$100.

15 Mr. Davis, will there be evidence on Mr. Irick's behalf?

16 **MR. POUSSON:** No, Your Honor.

17 **THE COURT:** Mr. Shoaf, will there be evidence on
18 Mr. Byrd's behalf?

19 **MR. SHOAF:** No, Your Honor.

20 **THE COURT:** Will there be evidence on Mr. Shivers'
21 behalf?

22 **MR. HUGGINS:** No, Your Honor.

23 **THE COURT:** Mr. Pousson, does the government have
24 additional evidence?

25 **MR. DAVIS:** No, not at this time, Your Honor.

1 **THE COURT:** Now, when you say "not at this time," are
2 you suggesting that you may have evidence?

3 **MR. POUSSON:** No, Your Honor, not as to this case.
4 My only hesitation is that, as you know, I was not here for the
5 previous hearing. My understanding was that the Court had
6 inquired about other matters -- details about other matters in
7 the presentence report.

8 **THE COURT:** That's correct.

9 **MR. POUSSON:** I have a witness here that might answer
10 any of those questions, if the Court still has them, but I
11 would not ask to put him on unless the Court still has those
12 questions.

13 **THE COURT:** Oh, I do. I have very strong questions
14 about that. I'm not sure one witness is sufficient.

15 **MR. POUSSON:** Yes, Your Honor. We have brought in
16 the detective from Cary who was the lead detective for all of
17 the Cary matters that are referenced in the PSR. If the Court
18 has questions about those, I would be happy to call him and put
19 some evidence on the record as to those incidents; but as to
20 facts of this incident in Durham, I have no additional evidence
21 to offer.

22 **THE COURT:** Okay. I really was anticipating evidence
23 from witnesses of that.

24 **MR. POUSSON:** My apologies, Your Honor. I assumed
25 that the detective would be sufficient to provide an overview.

1 I didn't realize that the Court wished to go into detail with
2 each of those individuals.

3 **THE COURT:** That's a very important part of where we
4 are in this matter, and --

5 **MR. POUSSON:** Yes, Your Honor.

6 **THE COURT:** -- it has a lot to do with considerations
7 for these three defendants and what should be done, and I am
8 sure none of them are going to say that they participated in
9 that. So it is a question of the government proving by a
10 preponderance of the evidence --

11 **MR. POUSSON:** Yes, Your Honor.

12 **THE COURT:** -- what did take place there, if there
13 was an offense that took place there.

14 **MR. POUSSON:** Yes, Your Honor.

15 **THE COURT:** Do you need a few minutes?

16 **MR. POUSSON:** If I could, Your Honor? I'm sorry. I
17 am trying to determine how to proceed. I believe the detective
18 here could testify as to all of the evidence that would tie
19 these defendants to those incidents. He would not, however, be
20 able to provide the -- he would not be able to testify as the
21 victims themselves.

22 **THE COURT:** Unless there were statements, admissions.

23 **MR. POUSSON:** That would be --

24 **THE COURT:** Then that's not going to be sufficient.

25 **MR. POUSSON:** Yes, Your Honor. It's my understanding

1 that all of the evidence tying these -- or most the evidence
2 tying these individuals to those offenses were statements that
3 they made when they were arrested for this incident.

4 **THE COURT:** Well, then that may be sufficient.

5 **MR. POUSSON:** Yes, Your Honor.

6 **THE COURT:** And you may proceed.

7 **MR. POUSSON:** Thank you, Your Honor. The government
8 would ask to call Detective Jim Young to the stand.

9 **DETECTIVE JIM YOUNG,** GOVERNMENT'S WITNESS, at 10:06 a.m., being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 **BY MR. POUSSON**

13 Q Good morning, sir. Once you get settled, if you could
14 please state and spell your name for the Court.

15 A My name is Jim, J-I-M, Young, Y-O-U-N-G.

16 Q And how are you employed, sir?

17 A I'm a detective with the Cary Police Department.

18 Q How long have you been a member of law enforcement?

19 A Approximately 18 years.

20 Q As part of your duties, did you have occasion to
21 participate in an investigation of several robberies in Cary
22 that occurred on 6/2, 3/2 and 6/17 of last year?

23 A Yes, sir, I did.

24 Q And what was your role in these investigations?

25 A I was assigned as the primary detective regarding these

1 incidents.

2 Q And as part of that investigation, did you become familiar
3 with an incident that occurred at Jared's Galleria of Jewelry
4 in Durham?

5 A Yes, sir.

6 Q Did you have any participation in that investigation?

7 A Yes, sir, I did.

8 Q And what was your -- what was the nature of your
9 involvement in that investigation?

10 A Yes, sir. I was on duty at the time the individuals
11 identified as being responsible for the incident in Durham at
12 Jared's -- they were involved in a traffic collision,
13 single-car traffic collision in Cary. I responded out to that
14 location and quickly noted evidence within the vehicle -- or a
15 vehicle that appeared tied directly to at least one or two of
16 the incidents in Cary.

17 Q With relation to the previous incidents in Cary, were you
18 involved in an investigation of an incident on 6/2 of 2013?

19 A Yes, sir, I was.

20 Q And what was the nature of that incident?

21 A That was an armed robbery at the McDonald's restaurant at
22 869 Southeast Maynard Road in Cary.

23 Q How many suspects were identified in that incident?

24 A Two black male individuals.

25 Q And were any weapons reported in that incident?

1 A Yes, sir. They were armed with handguns.

2 Q During the course of that investigation, did law
3 enforcement have occasion to interact with a Rodney Byrd?

4 A Yes, sir.

5 Q And why was it that they came into contact with him?

6 A Mr. Byrd was an employee that was working within the
7 McDonald's at the time that the armed robbery incident took
8 place.

9 Q As part of that investigation, was surveillance video --
10 was there -- did officers check to see if there was
11 surveillance video in the McDonald's?

12 A Yes, sir, the business was able to provide us with
13 surveillance video footage.

14 Q Did you review that footage?

15 A Yes, sir, I did.

16 Q Could you describe the two suspects from that -- that you
17 observed on that footage?

18 A Yes, sir. One of the males entered, had on a light what I
19 would describe as a powder blue hooded sweatshirt with orange
20 gloves and was armed with a handgun. The second individual I
21 believe was a taller individual and -- give me one moment to
22 look for that information. He had on a black hoodie that
23 appeared to have the word "TAPOUT" written on the front of it
24 in white lettering. That individual had on black and red
25 gloves, blue jeans, black sneakers.

1 Q At the time that you responded to the wreck that resulted
2 from the incident at Jared's, did you make any observations in
3 that wreck that had any bearing on this robbery that you've
4 just described?

5 A Yes, sir, I did.

6 Q What were those observations that you made?

7 A So within the vehicle that was involved in a
8 single-vehicle collision within Cary, I noted that there was --

9 **THE COURT:** What type vehicle was that?

10 **THE WITNESS:** That was a Nissan Pathfinder SUV.

11 **THE COURT:** Okay.

12 **THE WITNESS:** Within that vehicle, I noted at least
13 one orange glove that was visible within the passenger area
14 without the vehicle being explored, and also I noticed what
15 appeared to be a handgun or possibly a pellet gun that was in
16 the sleeve behind the driver's side seat.

17 **BY MR. POUSSON**

18 Q Did you have occasion, as part of your investigation, to
19 request surveillance video from Jared's in relation to the
20 robbery that occurred at Jared's?

21 A Yes, sir.

22 Q Did you watch that video?

23 A Yes, I watched stills from that video, some still
24 photographs.

25 Q And did you make any observations about the individuals

1 that you observed in those photographs as relates to the
2 robbery at McDonald's that you were investigating?

3 A Yes, sir. I noted that one of the individuals was wearing
4 a light blue, powder blue hooded sweatshirt that was consistent
5 with the sweatshirt worn in the McDonald's video from the
6 robbery on June 3rd -- excuse me -- June 2nd.

7 Q In addition to the June 2nd robbery, did you also have
8 occasion to investigate an incident in the Wells Fargo parking
9 lot on 6/17 of 2013?

10 A Yes, sir, I did.

11 Q What was the nature of that incident?

12 A At approximately 9:45 p.m., an individual from a business
13 within Cary Towne Center was dropping off the bank deposit at
14 the night drop box at the Wells Fargo. As he exited his
15 vehicle to unlock the night deposit box, he was approached --
16 two black males approached from a wooded area. One was armed
17 with a handgun. They made contact with him, removed the bank
18 bag with the deposits from his person, and fled back in the
19 wooded area.

20 Q Were any weapons reported in that incident?

21 A Yes, sir, at least one handgun.

22 Q Now, as part of your investigation, did you have occasion
23 to inquire as to whether or not Mr. Vendai Irick, Rodney Byrd,
24 or Denzel Shivers made statements after they were arrested for
25 the Jared's incident?

1 A Yes, sir.

2 Q And did you obtain -- did you also request any information
3 as to whether or not those interviews were recorded?

4 A Yes, sir, I did.

5 Q And did you yourself review those interviews?

6 A Yes, sir.

7 Q In relation to -- during those interviews, did any of
8 those three individuals make statements related to your -- the
9 robberies that you were investigating?

10 A Yes, sir. Mr. Shivers provided a statement that Mr. Byrd
11 and Mr. Irick were responsible for the robbery of the
12 individual at the Wells Fargo on June 17th. Mr. Irick advised
13 that all three individuals -- Mr. Shivers, Mr. Irick, and
14 Mr. Byrd -- were responsible for the incident that took place
15 at McDonald's on June 2nd and the incident that took place at
16 Wells Fargo on June 17th.

17 Q In looking at the incident that occurred at Jared's, did
18 you -- were you -- at the time that that incident occurred,
19 were you -- if I could withdraw that, Your Honor?

20 In addition to these two robberies that you've just
21 described, did you also have occasion to investigate an
22 incident on Sedgemoor Drive on June 23, 2013?

23 A Yes, sir, I did.

24 Q And when did this incident occur with relation to the
25 robbery at Jared's Jewelry?

1 A The incident at 106 Sedgemoor took place on Sunday
2 evening, June 23 at approximately 7:30 p.m., which would have
3 been about 26 hours prior to the incident at Jared Jewelers.

4 Q What was the nature of the incident that was reported on
5 Sedgemoor Drive?

6 A A female resident of 106 Sedgemoor Drive reported that she
7 had came home from The Streets at Southpoint in Durham. She
8 arrived home, stayed at the residence for a brief period of
9 time before leaving to go to the grocery store. When she left
10 the second time, she left her garage door open. When she
11 returned from the grocery store, she was unloading groceries
12 from her car into the interior of the house. Two black males
13 entered the garage. They attempted to remove her person from
14 the garage and --

15 **THE COURT:** Attempted to remove what?

16 **THE WITNESS:** They attempted to take her from the
17 garage. They attempted to physically take her with them. They
18 made statements that she was coming with them. That act was
19 interrupted by the female's boyfriend opening up the door
20 leading from the interior out to the garage. When he yelled
21 out, the two black males exited the garage and ran off into a
22 wooded area.

23 **BY MR. POUSSON**

24 Q Was any evidence recovered at that crime scene?

25 A Yes, sir. The next day, on Monday, June 24th, at about

1 2:50 p.m., a resident at 205 Sedgemoor Drive reported to our
2 agency, the Cary Police Department, that he had recovered a
3 .177-caliber magazine that sits into a BB, or pellet, gun in
4 his yard.

5 Q You mentioned observing -- well, let me take you back to
6 the Pathfinder that you observed wrecked after the Jared's
7 robbery. Did you observe any form of weapon inside that
8 vehicle?

9 A Yes, sir.

10 Q And what was it that you observed?

11 A There was a -- it appeared to be either a handgun or a
12 possibly a pellet gun, and it was in the sleeve behind the
13 driver's hand -- driver's side seat.

14 Q And did the -- did that weapon have a magazine in it at
15 the time that you observed it?

16 A No, sir, it did not.

17 Q Did you subsequently have any occasion to compare the
18 magazine that was recovered from Sedgemoor Drive with the
19 weapon that was recovered inside the Pathfinder after the
20 Jared's robbery?

21 A Yes, sir, I did.

22 Q And when did that occur?

23 A That took place on Tuesday, June 25, at approximately
24 8:00 p.m.

25 Q And what happened when you made that comparison? What did

1 you find?

2 A The magazine that was recovered in the yard of 205
3 Sedgemoor Drive, that fit into the pellet gun that was
4 recovered from the Nissan Pathfinder.

5 **MR. POUSSON:** Your Honor, I don't believe I have any
6 further questions for Detective Young.

7 **THE COURT:** Mr. Davis?

8 **MR. DAVIS:** If I could have just a second, Your
9 Honor?

10 **THE COURT:** You may.

11 CROSS-EXAMINATION

12 **BY MR. DAVIS**

13 Q Detective Young, the lady that was involved in the
14 incident on June 23rd, was she able to identify any one of the
15 assailants?

16 A No, sir.

17 Q Did she describe any clothing?

18 A I don't have that in front of me. If -- I don't have that
19 information in front of me. She did provide us with a
20 description. It was two black males, and I believe she gave
21 dark clothing.

22 Q And you compared the magazine with the BB gun that was
23 found in the Pathfinder; is that correct?

24 A Yes, sir.

25 Q What kind of BB gun was it?

1 A It was a .177-caliber BB gun.

2 Q Is that the type of BB gun or pistol that you can find at
3 Wal-Mart?

4 A Yes, sir.

5 Q Nothing particularly special about that particular type of
6 BB gun?

7 A Nothing about the BB gun. The relationship was that when
8 the males fled from the garage at 106 Sedgemoor, there was a
9 female that was out walking her dog, and she actually saw the
10 two black males run down Sedgemoor and through the backyard of
11 205 Sedgemoor; and there is a cut-through that goes across to a
12 shopping center behind 205 Sedgemoor. So that sort of made our
13 relationship between the magazine and the incident at 106
14 Sedgemoor relevant.

15 Q Was the magazine checked for fingerprints?

16 A No, sir. The individual that recovered it had actually
17 not -- he had recovered it himself, so it would have been
18 contaminated.

19 Q Any DNA?

20 A No, sir.

21 Q So whether the magazine that was located came from the
22 pistol that was found in the Pathfinder, there is no way to
23 actually say?

24 A I don't have any forensic evidence, no, sir.

25 Q Was there an effort to obtain -- well, did the lady say

1 that the individuals were wearing gloves?

2 A I'm sorry. I don't have that report directly in front of
3 me.

4 Q Well, did she say -- did she, in fact, say that they were
5 not wearing gloves?

6 A I do not recall. I'm sorry.

7 Q Do you recall that there was an effort to obtain DNA from
8 the individual, the lady, since the persons supposedly touched
9 her?

10 A I do believe that we did do some swabs from her. I
11 believe that our City-County Bureau of Identification obtained
12 touch DNA from her, but, again, I am going off of memory. I
13 don't have that particular report in front of me.

14 Q As of this date, have any one of these three young men
15 been charged with that incident?

16 A No, sir.

17 Q And you were notified about the Jared Jewelry robbery and
18 the subsequent wreck?

19 A I learned of the wreck from the Durham Police Department
20 requesting assistance from the Cary Police Department
21 pertaining to the wreck and subsequent jump-and-run of
22 individuals. I responded to that; and upon arriving at the
23 scene and speaking with Durham police officers on the scene, I
24 learned about the Jared Jewelers robbery.

25 Q And based upon the information that you learned in

1 subsequent events, did you learn that Mr. Irick gave a
2 voluntary statement indicating his involvement in the
3 McDonald's and the Wells Fargo incidents?

4 A Yes, sir.

5 Q At the time that he was interviewed, was the incident on
6 Sedgemoor Drive known? Were you aware of that incident?

7 A Yes, sir.

8 Q Was there any questioning of Mr. Irick concerning that
9 incident?

10 A I was not -- no, sir. I was not present for that one, and
11 Durham Detectives did not have that information for me.

12 Q Do you have any information that would indicate that the
13 weapon that was used during the Wells Fargo or the McDonald's
14 incident was anything other than a BB pistol?

15 A No, sir.

16 Q You watched the surveillance video of the McDonald's
17 incident?

18 A Yes, sir, and the Wells Fargo.

19 Q And were -- did each one of those videos show the weapon
20 that was used?

21 A Yes, sir.

22 Q Did you make any comparison between the weapon that
23 appeared on the videos and the weapon that was found in the
24 Pathfinder?

25 A No, sir.

1 Q Did they look similar?

2 A The footage is not that good.

3 Q Okay. So whether there was a real gun or a BB gun, there
4 is no way to say at this point?

5 A I can only go on the reaction of the victims involved in
6 these two incidents and their statements to me, and they all
7 believed it to be a handgun that was --

8 Q I understand. As far as whether it actually was a BB
9 pistol or a regular gun, there is no other evidence to show
10 either way?

11 A No, sir.

12 Q Okay. The individual at the Wells Fargo, was he injured
13 in any way?

14 A No, sir.

15 Q The individuals at the McDonald's, was there any injury to
16 anyone?

17 A There were no physical injuries. I do believe that there
18 were some -- I believe one of the employees had to take some
19 time off due to the --

20 Q Was that the manager?

21 A I believe so, yes, sir.

22 **THE COURT:** Due to what?

23 **THE WITNESS:** Due to the emotional trauma of the
24 incident.

25 **MR. DAVIS:** Those are all the questions I have, Your

1 Honor.

2 **THE COURT:** Mr. Shoaf?

3 **MR. SHOAF:** Thank you, Your Honor.

4 CROSS-EXAMINATION

5 **BY MR. SHOAF**

6 Q Detective Young, from what you know of the evidence, how
7 many firearms or BB pistols were involved in the Jared robbery?

8 A I am not familiar enough with that particular incident.
9 I'm sorry.

10 Q How many firearms were used in the McDonald's robbery?

11 A In the McDonald's, there was at least one that I recall
12 clearly seeing on video. In reviewing the report, it appears
13 that only one subject had a handgun.

14 Q Okay. And Ms. Crews stated that she observed a handgun in
15 each of the suspects' hands that were standing in front of her,
16 and that was two of them; is that correct?

17 A I am looking for that statement right now, sir.

18 Q I believe that's in the report from Investigator Mitchell.
19 I don't know if you have that.

20 A Sir, I believe you are referring to an incident that took
21 place -- that's not the McDonald's incident, sir.

22 Q All right. Did Mr. Byrd make any statement to any law
23 enforcement officers about any of these incidents?

24 A Not to my knowledge, sir.

25 Q Have any of the handguns from any of these other

1 incidents, other than the Jared's, been recovered?

2 A No, sir.

3 **MR. SHOAF:** I have no further questions.

4 **THE COURT:** Mr. Huggins?

5 **MR. HUGGINS:** Yes, Your Honor, just a few questions.

6 CROSS-EXAMINATION

7 **BY MR. HUGGINS**

8 Q Detective Young, you stated that Mr. Shivers had made a
9 statement regarding some of these incidents you testified to?

10 A Yes, sir.

11 Q Did you bring a copy -- a written copy of those
12 statements?

13 A That statement was made to one of the Durham detectives,
14 and I believe I do have his report with me. I do not see a
15 written statement from any individual other than Mr. Irick, but
16 I do have the detective's report pertaining to his interview of
17 Mr. Shivers.

18 Q Do you know whether or not Mr. Shivers was read his
19 *Miranda* rights at the time?

20 A Yes, sir, I have a warning and waiver that was dated and
21 signed June 25 at 2:10 a.m. for Mr. Shivers.

22 Q Is that in relation to these incidents you stated he
23 admitted to?

24 A Yes, sir.

25 Q And did you speak with the officer that interviewed him?

1 A Yes, sir, I did.

2 Q But you don't have his statement today; is that correct?

3 A I have the officer's report.

4 Q Just the officer's report?

5 A Yes, sir.

6 **MR. HUGGINS:** No further questions, Your Honor.

7 **MR. POUSSON:** Nothing else, Your Honor.

8 **THE COURT:** When you refer to what Mr. Shivers said,
9 was it your testimony earlier that he implicated Mr. Irick and
10 Mr. Byrd in the McDonald's and the Wells Fargo robbery and not
11 himself?

12 **THE WITNESS:** Yes, sir.

13 **THE COURT:** In the Wells Fargo robbery?

14 **THE WITNESS:** Yes, sir.

15 **THE COURT:** Did he say anything about the McDonald's?

16 **THE WITNESS:** Mr. Shivers advised that -- he
17 explained to Detective Guardino with Durham that Rodney Byrd
18 had devised a robbery plan days before they did it and that
19 Mr. Byrd asked Mr. Irick and Mr. Shivers to be a part of it.

20 **THE COURT:** Of what?

21 **THE WITNESS:** The robbery at McDonald's.

22 **THE COURT:** Does he say he participated in the
23 robbery at McDonald's?

24 **THE WITNESS:** Yes, sir. He stated several times that
25 he should have not done the robbery.

1 **THE COURT:** And you are specifically referring to the
2 one at McDonald's?

3 **THE WITNESS:** Yes, sir.

4 **THE COURT:** And not just Jared's.

5 **THE WITNESS:** Not just Jared's, according to
6 Detective Guardino's report.

7 **THE COURT:** Mr. Huggins, do you have anything further
8 as a result of what I asked?

9 **MR. HUGGINS:** Just a couple questions, Your Honor.

10 **THE COURT:** Sure.

11 **BY MR. HUGGINS**

12 Q Did he say McDonald's in that report?

13 A Yes, sir. May I quote from where I am reading from?

14 Q Yes, sir.

15 A "Shivers explained to me that Devin devised a robbery plan
16 days before they did it and asked Vendai and himself to be a
17 part of it. He stated Devon's real name is Rodney Byrd, and he
18 works at McDonald's at Cary Towne Center. He stated that he
19 thinks Vendai's last name is Irick and has a tattoo of 'Irick'
20 on his chest. Shivers stated several times that he, quote,
21 fucked up and should not have done the robbery.

22 "I showed Shivers two photos I received from the video
23 surveillance footage at Jared's. One photo shows a black male
24 with sunglasses and a light blue hoodie with words written
25 across the front of the hoodie. Shivers identified this person

1 as himself. I showed Shivers a second photo of a black male
2 with sunglasses, dark blue jacket, and Indians logo hat. He
3 identified this person as Rodney Devin Byrd." That's the
4 information I am reading from.

5 Now, prior to that, they are discussing the incident at
6 Jared's. So reading from somebody else's report --

7 Q This is just basically how you read the report; is that
8 correct?

9 A That's the information I am testifying from. I am
10 interpreting somebody else's report.

11 **MR. HUGGINS:** No further questions, Your Honor.

12 **THE COURT:** Mr. Shoaf, do you have anything further?

13 **MR. SHOAF:** Nothing further.

14 **THE COURT:** Mr. Davis?

15 **MR. DAVIS:** No, Your Honor.

16 **THE COURT:** Mr. Pousson?

17 **MR. POUSSON:** No, Your Honor. Thank you.

18 **THE COURT:** Thank you, Detective.

19 (At 10:37 a.m., the witness excused)

20 **THE COURT:** Mr. Pousson?

21 **MR. POUSSON:** Your Honor, the government doesn't ask
22 to offer any further evidence.

23 **THE COURT:** Mr. Davis, at this point do you have
24 evidence?

25 **MR. DAVIS:** No, Your Honor.

1 **THE COURT:** Mr. Shoaf?

2 **MR. SHOAF:** No, Your Honor.

3 **THE COURT:** Mr. Huggins?

4 **MR. HUGGINS:** No, Your Honor.

5 **THE COURT:** I would be glad, Mr. Davis, to hear from
6 you.

7 **MR. DAVIS:** Your Honor, first, I would like to
8 acknowledge the presence of Mr. Irick's family. His
9 grandfather, his mother, and other relatives, brother and aunt,
10 all are here. Some have come all the way from South Carolina
11 to be with him.

12 Your Honor, there is no question that this is a serious
13 offense. All of the events that have been testified to are
14 serious.

15 June 2013 was certainly not a good month for Mr. Irick in
16 his life because when he messed up, he messed up in a big way,
17 and I've explained that to him.

18 In spite of the fact that he's 22, he's very immature for
19 his age. As I have indicated in my position paper, a lot of --
20 I would interpret a lot of his involvement in these events is a
21 result of his immaturity. As serious as the offense -- the
22 events are, it's not something that had been typical for him up
23 until this time; and why he chose to get involved in these
24 activities at this particular time, I don't know. He's not
25 been able to give me any satisfactory answer. I don't even

1 think he understands exactly why he did what he did.

2 As the officer testified and as all of the reports have
3 indicated, that when he turned himself in and was interviewed,
4 he readily admitted his involvement, not only in the Jared's
5 robbery, but he also admitted his involvement in the McDonald's
6 and the Wells Fargo robbery.

7 You know, I have gone over and over with him as to whether
8 or not there was anything else that he had been involved in,
9 and it appears that that was the extent of his involvement in
10 the Jared, the McDonald's, and the Wells Fargo robberies.

11 Your Honor, I have in my position paper asked the Court to
12 vary downward based on his immaturity, and I set forth the
13 reasons why I think that would be appropriate.

14 Regardless of whether the Court imposes a sentence within
15 the guidelines or below the guidelines or above the guidelines,
16 I would contend that a sentence of 84 months would be a serious
17 matter, would certainly be severe punishment for someone who's
18 never been in any real trouble before, and would be sufficient
19 punishment and at the same time give him an opportunity to get
20 his life together, to grow up. If he got a 7-year sentence,
21 when he got out, he would be 29. Hopefully, that time in
22 prison would be sufficient to help change his way of thinking,
23 decision-making because certainly he definitely has to change
24 that pattern.

25 I don't know what's going to happen with the charges in

1 Raleigh. Those matters are still pending, have not been
2 dismissed. I doubt they will be dismissed. Whatever
3 punishment he gets over there -- you know, I don't know. I
4 would ask the Court that since those matters are pending -- I
5 understand the Court is probably going to take those into
6 consideration in deciding what sentence to impose, but at the
7 appropriate time, those matters will be addressed in another
8 court.

9 So I would ask the Court to consider varying downward. If
10 the Court feels that a downward variance is not sufficient,
11 then I would ask the Court to sentence him toward the lower end
12 of the guidelines. Thank you, Your Honor.

13 **THE COURT:** Thank you, Mr. Davis.

14 Mr. Shoaf -- let me start off -- Mr. Irick, Mr. Byrd,
15 Mr. Shivers, what I do is start off hearing from the
16 defendants' lawyers, and then I will hear from the government's
17 lawyer. So each of you will have an opportunity to hear what
18 the lawyers say before you have a turn to speak so you will
19 know what each has said, and then I will be glad to hear
20 whatever it is you would like to say. You don't have to say
21 anything; but after hearing your lawyer and the government's
22 lawyer, if you would like to speak, then you may say anything
23 that you wish.

24 Mr. Shoaf, on Mr. Byrd's behalf?

25 **MR. SHOAF:** Thank you, Your Honor. I have had

1 extensive conversations with Mr. Byrd's father, and there are
2 several family members here with his father. If you would all
3 raise your hands that are with Mr. Byrd. They've all been very
4 concerned about him.

5 In my memorandum to the Court, I did mention that this
6 young man is -- he is only 20 years old, and he is responsible
7 for his acts, but he is very -- he has the immaturity of a
8 young person.

9 His father -- as I said, we've talked a good bit. If the
10 Court would allow, at the proper time, he would like just to
11 say a few words to the Court. I would be glad to put him up.

12 **THE COURT:** That's --

13 **MR. SHOAF:** And I would say, Your Honor, before I put
14 him up, that this young man -- as I wrote this memorandum with
15 respect to sentencing, the first thing that I did and it is --
16 lists the things that they did, and it's -- not only is it
17 serious, it's very frightening, and I think the Court has heard
18 from the victim in the case.

19 It almost -- and I said in my paper, it almost seems like
20 something you would see on television, that they would do all
21 of these things. I would argue to the Court that they are
22 responsible, but they are awfully young, and I don't -- as Greg
23 said, I don't know why they would go out and do something like
24 this.

25 He is looking at 151 to 188 months, and I am asking the

1 Court to consider the low end. That's over 10 years, and I
2 think it would be sufficient but not greater than necessary to
3 punish this young man; and, hopefully, he will have a life
4 afterwards.

5 I would ask that his father come forward, as he wants to
6 have some say to the Court.

7 **THE COURT:** Sure.

8 **RODNEY BYRD**, DEFENDANT'S WITNESS, at 10:46 a.m., being first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 **BY MR. SHOAF**

12 Q Sir, state your name, please, sir.

13 A Rodney Byrd.

14 Q Mr. Byrd, you are the father of Rodney Byrd, my client?

15 A Yes, sir.

16 Q And when this incident happened, was he living at your
17 home?

18 A Yes, sir.

19 Q I believe, according to the presentence report, for about
20 the first 11 years of his life, he lived with his mother?

21 A That would be accurate.

22 Q And then he's been living with you since then?

23 A Yes, sir.

24 Q All right. And did he go to high school while living with
25 you?

1 A Yes, sir. Devin actually started middle school when we
2 moved from Charlotte to Cary, and he started actually in the
3 fifth grade, and we moved early in his fifth grade year to
4 Cary, and he started middle school there and continued to
5 graduate from Cary.

6 Q Are there any other siblings in the home?

7 A Yes, sir.

8 Q Do you have any other sons and daughters?

9 A I have a daughter that's 13 years old now.

10 Q So she's a half-sister?

11 A Yes, sir.

12 Q Okay. After high school, I believe he enrolled in some --
13 what was the school?

14 A Community college at -- Guilford Tech Community College
15 here in Greensboro.

16 Q Had you had some discussions with him about what he was --
17 what track he was on to do?

18 A Yes, sir. Initially, after Devin's graduation, he had
19 considered going into the military, and we offered him the
20 opportunity to explore that first year. You know, if he didn't
21 want to go to a four-year college, which we had set out and
22 prepared for him to, that we would come back after a year and
23 look at some opportunities for him at that time.

24 Devin had an interest in becoming an engineer. He asked
25 us if he could move to Greensboro to attend the Guilford Tech

1 Community College, which he did, and with hopes of transferring
2 into North Carolina A&T. That didn't happen.

3 He came home the spring of 2013. He acquired two jobs.
4 He was actually working before he came to Cary. He was working
5 in Cary. He was coming home a few weekends early in the spring
6 of 2013 where he had obtained two jobs. He was working both
7 jobs while living in my house at that time. So he had plans of
8 going back in August of 2013 as well.

9 Q I believe you told me that right before this crime took
10 place, you and he had a discussion about his future?

11 A Yes, in-depth discussions almost daily. I work from home,
12 and I'm at home with him. He was living in my house. I was
13 taking him back and forth from work. His plans were to save
14 money to get a car, and that's something that we had challenged
15 him to -- you know, if he could bring forth his part, we would
16 help to get him a car before he goes back to school in August.

17 We had long conversations about the future, and, you know,
18 I talked about my life, how I came up, and what, you know,
19 encouraged me to go to college and encouraged my wife to pursue
20 the career that she pursued and what we were hoping for him,
21 you know; and I just kept giving him encouragement every day to
22 want to do more with himself, not just settle for a fast-food
23 job but, you know, aspire to be more than that and use his
24 skills, and Devin has great talent. He has great talents that
25 he just wasn't putting into action, you know, and I knew they

1 were there. He's very compassionate about a lot of things and
2 about people. So this was quite alarming to me, to say the
3 least.

4 Q In 2011, there was a breaking or entering; and then after
5 that, there was a misdemeanor possession of marijuana in 2013,
6 and you say he was living in your house. Did you discuss those
7 matters with him, and did you think he understood that those
8 were bad things, that he shouldn't be doing anything against
9 the law again?

10 A Yes, sir, I did, and I can speak to both matters. In the
11 2011 case, Devin ran into a friend that he was friends with
12 from high school that was going to -- he met at the YMCA. They
13 played a lot of basketball together.

14 I remember the night that I picked Devin up from work. He
15 was working at T.J. Maxx part-time, and the gentleman and
16 another guy was there. Devin hadn't seen the guy in maybe two
17 or three years. He had moved and transferred to another
18 school, and that was the first time he had seen him in a few
19 years.

20 A couple weeks later, Devin said that the two young men
21 called him about -- asking to inquire where they could purchase
22 some marijuana, and Devin said he didn't know anyone. He knew
23 of a guy, a young kid, that was an engineering student at UNC
24 Charlotte at the time that Devin was friends with. He said
25 that Devin introduced him to that guy, and so the guys devised

1 a scheme, I guess, to get Devin to ride with them. Devin
2 didn't know what they were going to do.

3 So they went with this guy to a man's house, an adult, for
4 the young man to try to obtain some marijuana. When the man --
5 the man had this young Indian kid with him. He saw the kids
6 that was in car. He said that he wasn't going to do anything
7 like that. In turn, the guys put Devin's friend out and made
8 Devin ride back with them to the kid's house. Devin sat in the
9 car, and they went inside the house.

10 During that time, when he went to court, it was clearly
11 stated that, you know, he was -- he didn't go into the house.
12 There was no evidence that he went into the house. It was just
13 the fact that he rode with them and came back. This was all,
14 you know, something that he didn't know was going to happen,
15 and it happened.

16 Q But, yet, it revolved around drugs?

17 A It did.

18 Q And the incident in 2013 also was marijuana. Did you
19 suspect that he was starting to use drugs?

20 A Well, I had a concern about marijuana. I never could --
21 you know, I never did have him tested or anything, but I was
22 always concerned if that's what he was doing. He never had any
23 kind of body odor or anything that smelled like marijuana in
24 the house, but I probably could have assumed that he and his
25 friends were probably using marijuana away from the home.

1 Q I believe you stated that he was working, and you said
2 sometimes two jobs. He also had a curfew; right?

3 A Yes.

4 Q You imposed a curfew?

5 A Yes, sir, I did.

6 Q And he was supposed to be home at a certain time?

7 A Yes, sir.

8 Q And did he do that? Did he comply?

9 A He complied with that all the way up until the time this
10 stuff happened.

11 Q And you had no clue as to -- that this was going to
12 happen?

13 A Not at all, sir.

14 Q Did you know these other two young men?

15 A No, sir.

16 Q Had they ever been in your home?

17 A The only person I seen -- Vendai had come to the house one
18 time to help Devin move some of his clothes when he was moving
19 to Greensboro, and he never entered the house. He was just
20 outside.

21 Q So you never had seen them all three together?

22 A No. I wouldn't consider them to have been Devin's close
23 friends. I mean, his close friends are people that we knew
24 that would come to the house.

25 Q And he is -- Rodney has had ADHD or ADD?

1 A He was diagnosed with ADHD -- well, ADD initially by a
2 family doctor, his pediatrician at the time. He was having
3 some issues in school with impulsivity and hyperactivity sort
4 of interfering with his ability to learn and stay focused in
5 class.

6 Q Did he continue to be treated for this?

7 A Yes, sir, up until 2011, if I am not mistaken, until he
8 reached almost age 18.

9 Q And you and your family will be there for him when he gets
10 out?

11 A 110 percent.

12 Q And you would like for him to be sent somewhere close by
13 as far as -- as close as possible so that you can visit?

14 A That's exactly right.

15 Q Do you think he needs some psychological help while he is
16 in prison?

17 A Yes, sir, I do.

18 **MR. SHOAF:** No further questions, Your Honor.

19 **MR. POUSSON:** If I could briefly, Your Honor?

20 **THE COURT:** You may.

21 CROSS-EXAMINATION

22 **BY MR. POUSSON**

23 Q Mr. Byrd, you talked briefly about your son's prior
24 misdemeanor drug offense; is that correct?

25 A I didn't mention anything about -- yes, yes, one incident,

1 yes.

2 Q Was he living with you during that time?

3 A Yes, sir.

4 Q And did you talk to him about that incident?

5 A Yes.

6 Q And did you know that he was placed on probation for that
7 incident?

8 A Yes, sir.

9 Q Was that probation -- during the period when he was on
10 probation, was he living with you?

11 A Yes, sir.

12 Q Do you know how that probation ended?

13 A He fulfilled the probation. It was a one-year probation
14 that he fulfilled successfully.

15 Q And you didn't know -- it's your understanding then that
16 he didn't have any problems on probation?

17 A No, sir.

18 Q You weren't aware of anything?

19 A Not during that time.

20 Q And during that time, he was living with you?

21 A Yes, sir.

22 Q Okay.

23 **MR. POUSSON:** No further questions, Your Honor.

24 **THE COURT:** Did you see his grades that he got when
25 he was at Guilford Tech?

1 Q What is your occupation?

2 A I am a sub-award manager for Duke Energy, a contracts
3 manager.

4 Q Were you living in Fuquay-Varina when this particular
5 incident took place?

6 A Yes, I was.

7 Q Was Mr. Shivers living with you at the time?

8 A No, he wasn't. At the time that this happened, Denzel was
9 just permitted to come back home on that Saturday; but prior to
10 that, he was not living in the home.

11 Q Now, is he the oldest of all siblings?

12 A No, he is the second.

13 Q How many children were you taking care of at the time of
14 this incident?

15 A At the time of the incident, nine. Can I clarify?

16 **THE COURT:** I understand you are taking care of your
17 sister's children?

18 **THE WITNESS:** Yes.

19 **THE COURT:** You have five and she had four?

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** She has cancer?

22 **THE WITNESS:** No, she was diagnosed with bipolar
23 disorder.

24 **THE COURT:** I read that in the presentence report and
25 was just gratefully admiring and respecting what you were doing

1 in undertaking that.

2 **THE WITNESS:** Thank you.

3 **BY MR. HUGGINS**

4 Q How would you characterize your son?

5 A Denzel is -- I don't mean -- I don't want to come against
6 him, but he is not as mature as his age, and that has always
7 been the case with him. Denzel is loving. He is caring. He's
8 respectful of persons, just a beacon of light. Everyone is
9 attracted to him. There is no place that he can't go that they
10 will just not adhere to him. He is always looking at
11 everybody. There is not one plate that he is a part of, if
12 that makes sense.

13 He's always been fair, especially when it comes to
14 standing up for his siblings, you know, mom. You know, he
15 always was defending his siblings. A go-getter, you know,
16 strong, just a go-getter. I've always tried to encourage him
17 to be that leader, but he always seems to fall into the
18 position of the follower.

19 He's a good young man. He is a good young man. In spite
20 of all that I have heard -- and this is the first that I've
21 heard coming to court of everything that has been brought
22 against him, the details, the explicit details.

23 **THE COURT:** Were you in court when --

24 **THE WITNESS:** Yes, when you did the continuance?

25 Yes, sir, we were. That's one of the reasons, I might add,

1 that his other siblings could not come back. It was just too
2 much for them.

3 I raised my kids as myself, that if you do something, you
4 stand up for it and you pay the Piper. I always was so -- I
5 tried keep their life so structured such that they didn't have
6 room for those added indiscretions. Idle hands is the devil's
7 playground, and I've always tried to keep him busy. He loves
8 basketball. Basketball was his thing. He was in school. He
9 was doing good. All of a sudden, I should have known something
10 was going wrong when he just all of a sudden just stopped, and
11 it always followed right after basketball.

12 His coaches love him. His teachers love him. He is known
13 in Fuquay-Varina. You can walk up and down the street and just
14 say Denzel's name, and everybody says, "We love him."

15 Q Has he been remorseful about his actions?

16 A Greatly to such that I have asked, not you but the prior
17 attorneys that were given to him, to make sure that there is
18 not anything -- just to make sure that he has someone to
19 counsel him while he was awaiting for all of this because it
20 was a lot, but, yes, he's been gravely --

21 Q During this time, he had started using a new drug,
22 cocaine; is that correct?

23 A Denzel's mind on marijuana is not a good thing. Denzel's
24 mind and Denzel's mind on cocaine is even worse. I had no idea
25 that he was using cocaine. If I had a clue, he would have been

1 the first one at a rehab.

2 **THE COURT:** The information that we have is that he
3 had been abusing marijuana since he was 12. Did you have any
4 information about that?

5 **THE WITNESS:** That is a lie.

6 **THE COURT:** Well, that came from him.

7 **THE WITNESS:** There is no way -- since he was 12,
8 Your Honor, he would have to have been in my house abusing it.
9 Twelve years old, Denzel was playing AAU basketball. Twelve
10 years old, Denzel he was in school. Twelve years old, he was
11 in church.

12 **THE COURT:** Do you have any idea why he would tell
13 the probation officer --

14 **THE WITNESS:** I have no idea. I don't even know how
15 Denzel was even able to give the statements that he did to the
16 officers because he was in the hospital. So there is a lot
17 that I have -- that I would love to challenge, but it's not
18 good for him for it, but I don't know why he would say
19 something like that. If you want to verify, he has an annual
20 physical every year, every year.

21 **THE COURT:** Well, they don't test for things like
22 marijuana.

23 **THE WITNESS:** Oh, but I have had drug tests on him,
24 and they came back negative. When I suspect something of my
25 own, I tested him, and they came back negative, and that was

1 done in Cary.

2 **THE COURT:** Thank you, ma'am.

3 **MR. HUGGINS:** No further questions, Your Honor.

4 **THE COURT:** Mr. Shoaf, do you have questions?

5 **MR. SHOAF:** No.

6 **MR. DAVIS:** No, Your Honor.

7 **MR. POUSSON:** No, Your Honor.

8 **THE COURT:** Thank you, ma'am.

9 (At 11:03 a.m., the witness was excused.)

10 **THE COURT:** Will there be further evidence,
11 Mr. Huggins?

12 **MR. HUGGINS:** No further evidence, Your Honor.

13 **THE COURT:** Mr. Pousson, you have no further
14 evidence?

15 **MR. POUSSON:** No, Your Honor, that's correct.

16 **THE COURT:** Why don't we take our regular mid-morning
17 recess at this time for about 15 minutes. Then when we come
18 back, I will hear whatever Mr. Pousson would like -- well, I
19 haven't heard from you yet, Mr. Huggins.

20 **MR. HUGGINS:** Yes, Your Honor.

21 **THE COURT:** I'll hear from you and then we'll hear
22 from Mr. Pousson about each of them, and then I will hear from
23 each of the individuals.

24 **MR. HUGGINS:** Thank you, Your Honor.

25 (The Court recessed at 11:04 a.m. and was called back to

1 order at 11:31 a.m.)

2 (The Defendants were present.)

3 **THE COURT:** Mr. Huggins?

4 **MR. HUGGINS:** Yes, Your Honor. On behalf of
5 Mr. Shivers, Your Honor, first and foremost, I would like to
6 recognize his family members who are present: Miss Shivers,
7 who just recently testified -- if you guys would please
8 stand -- his father, Charlie Shivers, as well as his sister. I
9 just wanted to acknowledge them.

10 Secondly, Your Honor, I don't know if anyone has done
11 this, but Mr. Shivers gave me permission to do this. On behalf
12 of Mr. Shivers, we would like to apologize to the victim for
13 this particular incident and what she has had to endure and go
14 through because of what happened and because of these
15 individuals' actions.

16 Mr. Shivers has prepared an apology that he would like to
17 read later to the Court, but, just briefly, I would like to
18 talk about some of the 3553(a) characteristics as it relates to
19 my client, Your Honor.

20 Your Honor, as you can see, this was Mr. Shivers' first
21 time pleading guilty and being convicted of an offense. He was
22 working at Bojangles'. He was going to school. He was playing
23 basketball. He was on the right track.

24 And the question has come up: Why did these individuals
25 commit these actions? Well, one of the reasons I think that

1 Mr. Shivers made that bad decision is he had actually used
2 cocaine for the first time on this particular day. He had been
3 using marijuana previously, but he used cocaine and, while he
4 was high, made a decision to commit this action. It does in no
5 way excuse his actions, but it helps to explain why he made
6 this bad decision.

7 Your Honor, the one good thing about Mr. Shivers I will
8 say is that he is still young. He is only 20 years old, and he
9 still has an opportunity to turn his life around. While he is
10 in custody, his mother has expressed this to me, he has
11 expressed this to me, that he would like to get in any and
12 every program that he can use to rehabilitate himself and make
13 himself a better person.

14 Your Honor, Mr. Shivers did a lot of damage that day, and
15 no words that I can say to the victim could make her whole
16 again from that action. However, it would ultimately be her
17 responsibility to possibly forgive Mr. Shivers and some of the
18 other individuals for their actions, but no words that I can
19 say could make her whole for what Mr. Shivers did; but I can
20 say on behalf of Mr. Shivers from talking with him, spending
21 time with him, he has cried about his actions. He has talked
22 about his actions. He's spent at least nine or more months in
23 custody, and he realizes that this is no joke. Being in court
24 today is no joke to him; and while spending time in prison --
25 or in jail awaiting the disposition of this matter, he has

1 gotten the sense of what life will be like for the next few
2 years, and he is really afraid about that.

3 He understands that he faces this Court today and must be
4 judged today, and he is ready to be judged and take
5 responsibility for his actions, but one thing I can say on his
6 behalf is that he's really sorry for what he has done; and if
7 he was given a second chance, he wouldn't do it again.

8 Your Honor, it is my hope that after he spends this
9 considerable amount of time in custody, that when he comes out
10 and gets on supervised release, that he will become and be a
11 better individual, that he will take advantage of every
12 resource that he has and become a better individual so that he
13 can be productive in society one day later on in the future.

14 Your Honor, I did state in my position paper that I am
15 asking the Court to downward depart in this particular case. I
16 am aware of the circumstances that surround this case, but,
17 primarily, it is not to excuse his behavior as to why I am
18 asking that. I am asking that because I am looking at his
19 youthfulness. I am looking at his family support. I am
20 looking at his immaturity. I am looking at the decision that
21 he made while he was on drugs; and just getting to know him as
22 a person, I still think that he has an opportunity or has a
23 chance to be better. I don't think that spending the next 10
24 to 15 years in prison would necessarily be the answer to
25 rehabilitate him. However, I am not saying that he should not

1 be punished, but what I am saying is considering all the
2 factors, considering what he has done outside of all this bad
3 stuff that we've heard today, we do see a man that does have
4 potential.

5 He's still young. So he has that opportunity. I've
6 represented people who have come to court at ages 50 and 60,
7 and I can understand why we consider them to not be turning
8 their lives around because they've built a lifestyle of
9 criminal behavior.

10 Your Honor, I am very sympathetic to what happened that
11 day to those victims. My mother was a victim of armed robbery,
12 and I have seen how it has affected her life over the years.
13 So I do understand somewhat of what this victim has had to
14 endure and go through mentally, emotionally, and physically.

15 Your Honor, that will be it for the Court. I would ask
16 the Court to just consider my position paper, consider his
17 criminal record, the fact that he has no prior convictions,
18 consider the testimony of his mother and his family support,
19 and I would ask that the Court would downward depart in this
20 particular case.

21 **THE COURT:** Thank you, Mr. Huggins. Mr. Pousson?

22 **MR. POUSSON:** Your Honor, in looking at the nature
23 and circumstances of this offense, I believe Mr. Shoaf said it
24 best in that it almost reads like something you would see in a
25 movie. I say that in a way that's not to glorify it in any way

1 but simply to say that the level of violence that was
2 threatened in this case and the circumstances of this case are
3 so unique and demonstrate such danger to the public that this
4 offense, this robbery of Jared's, does, in fact, call for a
5 very serious sentence.

6 One of the things that jumps out about this offense under
7 the nature and circumstances is that it was clearly
8 premeditated. We have a group of individuals who armed
9 themselves with a BB gun ahead of time and who took the time to
10 follow this victim back from her home. Many opportunities to
11 turn off. Many opportunities to rethink what they were doing
12 and to step away and to call it off. This was not a
13 spur-of-the-moment thing. This was something that was
14 deliberate, it was something that was planned, and it involved
15 levels of threatened violence through the kidnapping, through
16 the carjacking, through the robbery itself of over \$400,000 in
17 diamonds and jewelry and then two separate high-speed chases.
18 It's hard to think of any other case where the nature and
19 circumstances of the offense itself were so very dangerous and
20 provided such a threat to the public at large.

21 But even though the listed victim in this case is Jared's,
22 it's hard to read this and see the victim as the store when we
23 have Amanda Hill, and we have the impact that this case is
24 going to have on her.

25 Your Honor, probation has called for a sentence --

1 recommended sentences in this case between the middle and high
2 end of the guideline ranges for these various defendants, and I
3 submit that regardless of where the Court comes down in the
4 sentence, that certainly Miss Hill will live with this, the
5 trauma from this event far longer than these defendants will
6 serve in prison no matter what their sentences end up being.

7 I think, though the defendants have pointed to their
8 history and characteristics, they are all young. Certainly
9 that is counterbalanced in this case by the danger to the
10 public, and the Court's duty in this case is to protect the
11 public from other actions like this and to send a message that
12 these are offenses that call for and demand serious punishment.

13 **THE COURT:** Thank you, Mr. Pousson.

14 Mr. Irick, I would be glad to hear anything that you would
15 like to say.

16 **DEFENDANT IRICK:** I would like to apologize to the
17 Court and my family. I would like to apologize to Amanda Hill
18 and to the actions I did. I am not a bad person. I just got
19 caught up in the wrong thing. That's all I have to say.

20 **THE COURT:** Thank you, sir. Mr. Byrd?

21 **DEFENDANT BYRD:** Thank you, Your Honor. First off, I
22 want to apologize to Miss Amanda Hill and her family and
23 everything that they have endured through our troubles and
24 everything that they have gone through during this action and
25 crime.

1 I want to apologize to my family and all my loved ones and
2 to my co-defendants' families also for not being the voice of
3 reason, to step up and say, no, don't do this action or not to
4 take part in this or maybe change the situation that was going
5 to happen.

6 I feel as though the affliction that being locked up has
7 brought me through this nine months has changed me, changed my
8 mind. Now I am not thinking cloudy as I was out in the streets
9 or out in the world.

10 I worked two jobs. I was trying to do the right thing,
11 trying to go to school for engineering. I was just trying to
12 do the right thing, and my mind --

13 **THE COURT:** Mr. Byrd, excuse me for interrupting you,
14 but I have a tough time seeing your grades from Guilford
15 Technical College, thinking that you really were applying
16 yourself when -- you came in July and you left in December, and
17 your grades were way, way, way down. You hardly got any
18 credits for being there.

19 **DEFENDANT BYRD:** Yes, sir. During that time, I was
20 also working a job at Burger King. I was trying to pay for an
21 apartment at that time. I was trying to pay for my own living
22 at that time because the technical school didn't house you, and
23 I had to pay for my transportation to the school.

24 So during that time, I just -- I really lacked -- if you
25 would just talk to my professors, I just really lacked in my

1 performance on the exams due to studying or being there before
2 tests were taken and those things. Even though my high school
3 record -- I wasn't always a good test taker. I am not a good
4 test taker in many situations. I just -- my mind just wanders
5 different ways when I am looking at bubble sheets or ways on
6 how to answer questions.

7 But in that aspect, that's why I took -- I went back home
8 because I really wanted to go into the military at first when I
9 graduated high school because I knew it was going to be hard
10 for me to apply myself with studying by myself and not having a
11 tutor or not having anyone there to hold my hand. I had to do
12 it by my own, work and go to school and deal with a lot of
13 other things by myself, which was kind of hard.

14 But my parents gave me the option. They were, like, just
15 give it a shot for one year, and I did that and I failed. I
16 felt like a failure. So I just basically ran away from my
17 problems, and that's kind of been my decision-making, like -- I
18 was on probation for 12 months. I did the probation no
19 problem. I came home in December. I got in trouble in April
20 for having a misdemeanor possession of marijuana.

21 During that time, I was at home with my parents. My dad
22 was talking to me, trying to get me back on the right track. I
23 got working on two jobs. He was driving me. He was supporting
24 me. He was my help, he was my push, and he was going to help
25 me go back to school maybe closer to home not as far away as

1 Greensboro. He was going to maybe try to find something closer
2 to home. Maybe I could transfer to NC State and get in their
3 engineering program. He was going to basically hold my hand
4 and be my support system.

5 That's something I realized by being locked. My family
6 has still stood by me after hearing all of this, after going
7 through multiple things with me. They've always loved me.
8 During this time, I realized that I have to change myself. I
9 have to stand up, learn how to do it myself, go after school --
10 after -- as I go after my jobs or something simple. There's
11 more to life than just doing simple things. I want to be an
12 upstanding citizen in society and be somebody, as my parents
13 are. I look up to my dad in every aspect, and I want to be
14 like him someday.

15 That's all I have to say.

16 **THE COURT:** Thank you, sir.

17 Mr. Shivers, take your time. If you reach a point that
18 you want to just sit down and compose yourself, that's all
19 right.

20 **DEFENDANT SHIVERS:** I had a letter prepared for
21 Amanda Hill and you as well, but I figured that I might as well
22 speak from the heart because this is a serious moment in my
23 life.

24 I am sorry, Amanda, and your family, I am so sorry. Words
25 can't even express how sorry I am for you all. I've suffered

1 some injuries behind this crime that I am going to have to live
2 with for the rest of my life just as well as you have been
3 traumatized behind this. Don't feel like you are by yourself.

4 I know you are a good person. I remember the night when
5 we did this, and you said you are a cool individual. The
6 moment you told me that, I just wanted to turn around and not
7 even do it. I am sorry. I'm just so sorry. I don't mean to
8 be so emotional or anything, Amanda. I am really sorry. I am
9 deeply sorry for her family as well and her husband, Joshua
10 Hill.

11 During my time in incarceration, Your Honor -- it's 10
12 months, but I've never been locked up before a day in my life.
13 I went to the hospital -- right from the hospital to jail into
14 an environment I never had no idea about other than TV. It's
15 almost scary to know that being around certain individuals --
16 and I never even thought to consider the fact that I am putting
17 myself in this situation. I've learned --

18 **THE COURT:** It never occurred to you that if I get
19 caught for this, I am going away for a long time?

20 **DEFENDANT SHIVERS:** To be honest with you, Your
21 Honor, I almost thought jail in the federal government was kind
22 of imaginary because I never could see myself actually doing
23 anything that would cause me to end up in such an environment
24 due to the fact that I have been playing basketball all my
25 life. Basketball even -- I know that I had a 1.6 in high

1 school and graduated with that. It was a struggle due to the
2 fact that I was also smoking marijuana throughout the high
3 school period, and I couldn't really get into the classroom
4 like I really wanted to, but I always made it in time so I
5 could make sure that I was playing basketball, which is not --
6 it was athlete before student, I'll put it; but now, since I
7 went to community college, junior college, I've boosted my
8 grades, you can say, by .6 points. I don't know if you have
9 the exact average -- my grade-point average in college, but I
10 am doing better. It was a C average almost. I made a couple
11 of Bs, and I was on my way to making myself a better person.

12 **THE COURT:** You had researched this thing. You had
13 done research on your cell phone of where Jared's was, and then
14 you looked into a place to rob. They found that on your cell
15 phone. I mean, this wasn't just something you chanced into or
16 fell into, and this wasn't the first time that you had been
17 involved in something like that.

18 You mean it never crossed your mind that if I get caught,
19 gosh, I may go to prison? I may serve time if I get caught for
20 threatening somebody with at least what appears to them to be a
21 handgun? Wouldn't have cared if it wouldn't appear to them to
22 be a handgun, the trauma, the misery it would cause to somebody
23 seeing what appeared to be a handgun. Now their lives are
24 threatened.

25 That never crossed your mind that I if get caught, I am in

1 serious trouble?

2 **DEFENDANT SHIVERS:** Well, I researched the
3 whereabouts of Jared Jewelers the night of the crime, Your
4 Honor, and that was while I was under the influence of cocaine
5 for the first time.

6 **THE COURT:** Didn't you ask questions about the
7 diamonds?

8 **DEFENDANT SHIVERS:** While I was in the car, yes, I
9 did, Your Honor.

10 **THE COURT:** Where did you get that information that
11 made you ask questions about diamonds?

12 **DEFENDANT SHIVERS:** Well, I chose to commit a
13 robbery, so I was lost right then and there. I was trying to
14 commit the robbery, Your Honor.

15 **THE COURT:** While you are trying to do that, I mean,
16 it really didn't cross your mind, man, if I get caught, what's
17 going to happen? Wasn't that why you all were running like you
18 did, trying to evade the police, so you wouldn't get caught,
19 and this wouldn't happen?

20 **DEFENDANT SHIVERS:** It crossed my mind when we --

21 **THE COURT:** I mean, you didn't give up when the
22 police came after you, did you?

23 **DEFENDANT SHIVERS:** No, sir. It crossed my mind when
24 I pulled up to Meridian Parkway and seen the cop car of Officer
25 Gregory, I believe it was, and -- being under -- there is no

1 excuse. I accept full responsibility of what I did, Your
2 Honor. That's not what I am talking to you about, but being
3 under the influence of cocaine is pretty serious. You would be
4 surprised of the things you would consider about doing or
5 things you might say while being on it or do. I just thank God
6 that Amanda Hill wasn't harmed physically while I was on this
7 drug.

8 Yes, it scared me seeing the police lights behind me; but,
9 for whatever reason, I mashed the gas, and it landed me --
10 well, it put me in a near death experience that I am always
11 going to remember for the rest of my life. It's like a lesson
12 learned. I am before you today trying to get some of my life
13 back because I know it's probably already gone right about now.

14 I just -- my main thing I just want to tell the courtroom
15 and everything is that I am truly sorry. I apologize to the
16 Byrd family, my family, and Vendai's family, which always I
17 wanted to meet just as well as Devin's family. I knew them
18 while I was in high school. Due to the circumstances, you
19 know, maybe we can all forgive each other and move on from the
20 situation together as one.

21 That's all I got to say, Your Honor. That's all I got to
22 say.

23 **THE COURT:** Thank you, Mr. Shivers. I know it's
24 tough to stand there. You did a good job saying what you said
25 without reading.

1 This was an absolute nightmare for Amanda Hill. In
2 somebody's worse dreams, you would never think that somebody
3 would follow you into your driveway, pull what for all
4 appearances was a firearm, put it to your head, make you move
5 over into the passenger seat. Somebody gets in the back of the
6 passenger seat, takes the firearm from the person who had
7 pulled it to start off with, Mr. Shivers. Mr. Byrd is in the
8 backseat with the gun pointed up against her head, and they
9 drive from Creedmoor to Durham. Creedmoor is not just one or
10 two miles from Durham. Creedmoor is a piece down the road, as
11 Mr. Irick and Mr. Byrd found out the night before when they
12 were going to go maybe undertake the robbery on Sunday night
13 and ran out of gas because they didn't contemplate how far she
14 lived from the store.

15 Mr. Byrd tells her they've got somebody watching her home
16 and her family, and not only is she going to get her hurt if
17 she doesn't comply with their orders, but they are going to
18 have her family killed. I mean, I can't imagine the horror
19 that somebody would go through.

20 I sat here and listened about people finishing --
21 graduating from high school, going to college. Somebody in
22 that position has to understand -- immature or not, there has
23 to be a mental, intellectual understanding that if I threaten
24 somebody, I am telling them I am going to do something bad to
25 them or their family to make them do what I want them to do,

1 that's the reason I am telling you that. You've got to
2 understand the effect that has, or they wouldn't do what you
3 were telling them to do. That's exactly what you wanted.
4 That's exactly what happened.

5 Then because somebody happened to see what was going on in
6 the parking lot and followed the cars and was able to
7 communicate with the police, when the police come, there is a
8 high-speed chase. Don't take into consideration who I might
9 hit trying to get away from these police officers. Drive as
10 fast as I can go just to get away. Doesn't matter whose life I
11 endanger, whether it's mine or the officers or some kid
12 crossing the street or some woman pushing a baby carriage
13 across the street.

14 And then we learn about the earlier criminal involvement,
15 the McDonald's robbery, Mr. Irick and Mr. Shivers. You know, I
16 agree Mr. Byrd didn't admit that he participated in that, but
17 wasn't it unusual that it was at his McDonald's that that took
18 place? That's too unusual to think it's happenstance.

19 Same thing, same -- not the same emotional trauma as would
20 be experienced by an individual who has had her life threatened
21 and that of her family on this long drive, but still traumatic
22 enough for the manager of the store to have to miss time
23 because of psychological injury.

24 You know, this was well thought out. You say something is
25 well thought out just because there is some planning that has

1 gone into it, and it was something, as Mr. Pousson mentioned,
2 that could have been stopped at any time. You could have
3 decided after Sunday that we are not going to do this. That
4 would hurt somebody. You go back Monday. Same thing; you say
5 do it.

6 The recommendations by the probation officer did not take
7 into consideration the evidence that I heard with regard to the
8 McDonald's -- robbery at the McDonald's. Mr. Irick admitted to
9 the Wells Fargo robbery. I will not hold either Mr. Byrd or
10 Mr. Shivers accountable for that, although it would be awfully
11 strange to think that somebody else was not involved, but I
12 will not hold them accountable for that.

13 But, in any event, the recommendations in the presentence
14 report did not take the McDonald's into consideration or the
15 Wells Fargo as far as Mr. Irick is concerned; but, Mr. Irick, I
16 am not going to increase your punishment just because you were
17 honest in telling about the Wells Fargo beyond what I would
18 have considered concerning the McDonald's. So while I may
19 think that others were also involved, I am not going to punish
20 them for the Wells Fargo or to what happened to the woman in
21 her garage. I am not going to punish you further because of
22 Wells Fargo just because you were honest. I admire you for
23 being honest.

24 **DEFENDANT SHIVERS:** Thank you.

25 **THE COURT:** I do take into consideration your youth.

1 That's true; younger people do not have the equivalent ability
2 that you hopefully will have at age 35, 40, but all of you have
3 the intellectual intelligence to understand what you were
4 doing, and you had lots of people endangered psychologically,
5 if not physically, terribly psychologically endangered,
6 physically endangered on the highway.

7 The 3553(a) factors, in considering those for Mr. Irick,
8 for Mr. Shivers, a sentence in the middle of the advisory
9 guideline range. A sentence of 136 months is to be followed by
10 a period of 3 years of supervised release with the following
11 special conditions -- well, let me back up and say it.

12 In Mr. Byrd's case, a sentence of 175 months will be
13 followed by a period of 3 years of supervised release, and
14 there will be similar conditions for each of you in addition to
15 the standard conditions of supervised release:

16 You should provide to the probation officer any financial
17 information your probation officer requests. You should
18 participate in any substance abuse testing regardless of what
19 type testing that is directed by your probation officer. If
20 your probation officer instructs you to participate in
21 substance abuse treatment -- why don't we take a short break,
22 and we'll come back. You let us know, Mr. Shoaf, when you are
23 ready.

24 (The Court recessed at 12:03 p.m. and was called back to
25 order at 12:10 p.m.)

1 (The Defendants were present.)

2 **THE COURT:** If the probation officer instructs you
3 during supervised release to participate in substance abuse
4 treatment, you should do that regardless of what type treatment
5 that is. It could even be inpatient residential treatment. It
6 may be just simple counseling. We don't know.

7 If any type of treatment is directed, you may not use
8 alcohol as a beverage from the time whatever the treatment is
9 is scheduled to begin until it is scheduled to end.

10 You may be called on to pay for some or all of the
11 treatment. We don't know even from one year to the next how
12 much money the courts may have to pay for that. So we can't
13 say the courts would have the money to do that.

14 Now, with regard to restitution, it is my understanding,
15 Mr. Pousson, that the diamonds were recovered?

16 **MR. POUSSON:** Yes, Your Honor. I believe there was
17 testimony at the last hearing there was one item that was not
18 recovered.

19 **THE COURT:** That had a value of \$350?

20 **MR. POUSSON:** Yes, Your Honor. I believe everything
21 else was recovered.

22 **THE COURT:** With regard to the damage to Miss Hill's
23 car?

24 **MR. POUSSON:** My understanding is that insurance
25 covered her damage, and that she simply had a 50-dollar

1 deductible that she mentioned last time.

2 **THE COURT:** So the amount owed to Geico was some
3 \$11,050; is that correct?

4 **MR. POUSSON:** I believe that's what she testified to.
5 I wasn't present for that hearing, but I believe that's what I
6 was told she testified to.

7 **THE COURT:** The Durham Police Department never --

8 **MR. POUSSON:** The Durham Police Department did not
9 submit a claim for any damage.

10 **THE COURT:** For the Durham car that was dented during
11 the getaway?

12 As to those amounts that I just mentioned -- the \$350, the
13 \$50, the \$11,500 -- each of the defendants shall be liable to
14 make restitution jointly and severally. That means each of you
15 are each liable to pay, but all of you have an obligation to
16 pay. If your co-defendants pay, you get credit for what they
17 have paid; but if they don't pay, it's your responsibility to
18 pay it all. So each of you are going to have to make some
19 payment. It may be collected while you are in prison by the
20 Bureau of Prisons or maybe when you are on supervised release.

21 Now, with regard to the amount on supervised release that
22 each of the defendants might be expected to pay, Mr. Davis,
23 what are your thoughts with regard to Mr. Irick's ability?

24 **MR. DAVIS:** Your Honor, based upon his limited
25 previous employment, I would be afraid to say that he would

1 have the ability to pay more than \$100 a month. I think that
2 would be reasonable. I've discussed with him participating in
3 as many vocational programs to enhance his chances of getting a
4 job paying a little more than minimum wage. Hopefully, if he
5 does that, \$100 a month might be reasonable.

6 **THE COURT:** Thank you. Mr. Shoaf?

7 **MR. SHOAF:** Your Honor, I think Probation Officer
8 Wright has put \$100 in the presentence report. I would expect
9 that hopefully his father can help him, and, hopefully, he'll
10 do some education in --

11 **THE COURT:** His father shouldn't be expected to do
12 that. Let's talk about what this Mr. Byrd --

13 **MR. SHOAF:** What I meant was his father can probably
14 help him to get some employment because he's helped him to do
15 that before. I didn't mean that he would pay it. Hopefully,
16 that will be an asset that he has to help him get employment.
17 So I would think, Your Honor, that at least \$100 would be
18 doable.

19 **THE COURT:** Mr. Huggins, in Mr. Shivers' case?

20 **MR. HUGGINS:** Yes, Your Honor, we would ask for the
21 same thing. He's held down several jobs. He is a very
22 responsible individual. He would be able to make that
23 100-dollar payment as well.

24 **THE COURT:** Then, let's say, starting 60 days from
25 the time each begins supervised release, that restitution

1 payments in the amount of \$100 per month would be made with the
2 understanding that if you are really doing all you can to get a
3 job and make those payments and the circumstances are such that
4 you are not able to do that, your health, the economy -- you're
5 really making a good effort but you can't do it, then you and
6 your probation officer can come back to the Court and ask the
7 Court to reduce that amount.

8 If you have done really well and there is still money
9 owed, the government may come to the Court and say, look, they
10 can afford to pay more than \$100 a month. All of that will
11 depend on the circumstances. We'll leave it so. Either side
12 may come back and seek, the defendant, a reduction, the
13 government, an increase if the circumstances support that. It
14 would be up to the Court to make that decision at that time.

15 Now, the 100-dollar special assessment you may pay through
16 the Inmate Financial Responsibility Program of the prison
17 facility where you are designated to serve your time. I will
18 recommend that the Bureau of Prisons consider each of you for a
19 designation as close to the middle part of North Carolina as
20 possible.

21 **MR. DAVIS:** Your Honor, with respect to Mr. Irick, we
22 would request for a recommendation close to South Carolina.

23 **THE COURT:** Close to Orangeburg?

24 **MR. DAVIS:** Yes, sir, Your Honor.

25 **THE COURT:** Okay. I will recommend in Mr. Irick's

1 case that he be designated to a facility as close to
2 Orangeburg, South Carolina, as possible.

3 It is also recommended that each be allowed to participate
4 in any educational program, and I will add vocational training
5 programs. I encourage each of you to think about an
6 educational program. You have had interest in going to
7 college. This may be a good opportunity for you to do that;
8 but any program that you are interested in and qualify to
9 participate in, I strongly recommend that the Bureau of Prisons
10 allow you to do that.

11 I don't know whether the use of the pistol, which is still
12 considered a firearm in federal law, will prohibit your ability
13 to participate in substance abuse treatment; but I will
14 recommend that if you qualify, you be allowed to participate in
15 the Bureau of Prisons' most intensive substance abuse treatment
16 program.

17 As I was reading your presentence reports and reading
18 about each of you, you really underperformed in high school
19 academically. Each of you had used marijuana for some period
20 of time, according to what you told the probation office. And
21 I came along before the prevalence of marijuana. So I don't
22 know the effect it has, but I can't help but wonder if using
23 marijuana didn't affect your academic performance when you were
24 in school. Hopefully, you won't be using anything like that
25 while you are in the Bureau of Prisons.

1 Take advantage of that. Do whatever you can do to get
2 educational programs. I mean, if you are interested in
3 vocational training, do that, but pursue the educational
4 programs, too.

5 This may be your opportunity for the engineering,
6 Mr. Byrd, but you've got to apply yourself to do that. I
7 encourage you to do that.

8 Anything else that you know of that would be helpful to
9 you that I might be able to make a recommendation for?
10 Mr. Shoaf?

11 **MR. SHOAF:** Your Honor, if I may, his dad said that
12 he had had ADHD and ADD, and I think he said -- my client said
13 that his thinking might have been a little foggy. Could the
14 Court recommend that he be medically evaluated for any kind of
15 ADHD or emotional --

16 **THE COURT:** I will. I will recommend that Mr. Byrd
17 be examined upon entry into the Bureau of Prisons to determine
18 whether or not that may be a problem and whether or not he
19 needs something to help him out with that problem. He
20 mentioned the difficulty he had taking tests, which some people
21 have, and it is known as test anxiety. That may be a benefit.

22 Each of you has the right to appeal from the sentence
23 which I just announced. An appeal has to be filed, the notice
24 of an appeal, within 14 days from the time I sign the written
25 judgment and file that with the Court. So go ahead and let

1 your attorney know if you would like for that notice to be
2 filed so he can file it within that time after the judgment is
3 filed.

4 Anything further, Mr. Davis, you know of?

5 **MR. DAVIS:** Yes, Your Honor. The vehicle, the
6 Pathfinder, it was in the name of his grandfather, who is
7 present. He's expressed a desire to have that released, along
8 with any personal items. He indicated that they had purchased
9 a computer for Mr. Irick and some other personal items that
10 might have been in the vehicle. I would ask that that vehicle
11 be released to the grandfather.

12 **THE COURT:** Okay. Mr. Pousson?

13 **MR. POUSSON:** Your Honor, I don't think we have any
14 objection. To the extent that there might be personal items
15 inside that might bear on any of the pending other cases, we'd
16 ask if they be allowed to be retained until those cases are
17 resolved; but the vehicle itself, no problem releasing.

18 **THE COURT:** Then it is ordered that the Pathfinder
19 may be released. The items in the Pathfinder are evidentiary
20 items perhaps for the state to use in other cases. So I am not
21 going to order them to be released except, at the conclusion of
22 the period for appeals, they should be turned over to the state
23 if the state is pursuing those charges. Mr. Pousson, if you
24 are told the state is not pursuing those charges, then they
25 should be released.

1 **MR. POUSSON:** Yes, Your Honor. Thank you.

2 **MR. DAVIS:** Thank you, Your Honor.

3 **MR. SHOAF:** Your Honor, my client just told me his
4 wallet was found in the Pathfinder. So eventually, hopefully,
5 that will be returned to his father.

6 **THE COURT:** I will make the same finding with the
7 wallet as I just stated with regard to the personal items in
8 Mr. Irick's car.

9 **MR. SHOAF:** Thank you.

10 **MR. HUGGINS:** Your Honor, with respect to my client,
11 Mr. Shivers told me that his cell phone and his wallet was in
12 the victim's vehicle. He would like to get that returned to
13 him as well.

14 **THE COURT:** I will make the same order with regard to
15 those. At the conclusion for the period of appeals in this
16 case, if the state is pursuing their cases, they will be turned
17 over to the state for any evidentiary purposes. If the state
18 has informed the government here that it is not pursuing those
19 matters, then the government will turn them over.

20 **MR. HUGGINS:** Thank you very much, Your Honor.

21 **THE PROBATION OFFICER:** Your Honor, probation would
22 like to recommend warrantless search conditions for Mr. Irick
23 and the co-defendants.

24 **THE COURT:** I considered that and determined in this
25 case not to.

1 Mr. Pousson, do you know of anything further?

2 **MR. POUSSON:** Nothing further that I can think of.

3 **THE COURT:** Let's adjourn until 2:00.

4 (END OF PROCEEDINGS AT 12:24 P.M.)

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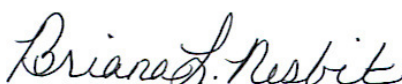
1 UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF NORTH CAROLINA

3 CERTIFICATE OF REPORTER

4
5
6 I, Briana L. Nesbit, Official Court Reporter,
7 certify that the foregoing transcript is a true and correct
8 transcript of the proceedings in the above-entitled matter.

9
10 Dated this 7th day of July 2014.

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14 Briana L. Nesbit, RPR
15 Official Court Reporter
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